

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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JEROME L. SCHMIDT, and  
LAURA A. SCHMIDT,

Plaintiffs,

v.

Case No. 05-CV-605

PATRICK J. HUDEC, MARY HUDEC, and  
UNITED STATES OF AMERICA,

Defendants.

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**ORDER**

On May 16, 2005, plaintiffs Jerome and Laura Schmidt filed an amended complaint in the Circuit Court of Walworth County, Wisconsin, Case No. 04-CV-01077, against defendants Patrick and Mary Hudec and the United States. The plaintiffs' amended complaint seeks the dissolution of a partnership operated by plaintiff Jerome Schmidt and defendant Patrick Hudec, a formal accounting of the partnership's affairs, and the partition of a parcel of real property allegedly owned by plaintiff Jerome Schmidt and defendant Patrick Hudec. (Am. Compl., 2-6). The amended complaint states that the United States may claim an interest in the property by virtue of a federal tax lien on it. (Am. Compl. ¶ 28). Pursuant to 28 U.S.C. Sections 1441 and 1444, the United States removed this action to the U.S. District Court for the Eastern District of Wisconsin on June 3, 2005.

By letter dated February 3, 2006, plaintiffs' counsel requested this court to enter a scheduling order for this action. However, the record does not indicate

whether defendants Patrick and Mary Hudec were served with a summons and a copy of the amended complaint, nor have the plaintiff's filed a waiver of service with the court. Additionally, although defendant United States answered the amended complaint after removing this action to federal court, as of the date of this order, defendants Patrick and Mary Hudec have not filed a responsive pleading to the amended complaint.

Federal Rule of Civil Procedure 4(m) states:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time. . . .

Fed. R. Civ. P. 4(m). Accordingly, the court directs the plaintiffs to effect service of a summons and the amended complaint upon defendants Patrick and Mary Hudec within thirty (30) days from the date of this order. If service has already been waived or effected upon defendants Patrick and Mary Hudec, the plaintiffs are directed to file either a written waiver of service or proof of service pursuant to Fed. R. Civ. P. 4(l) within thirty (30) days from the date of this order.

Civil Local Rule 41.3 states that if it appears that a plaintiff is not diligently prosecuting the action, the court may enter an order of dismissal with or without prejudice. *Id.* The Seventh Circuit held that there must be an explicit warning before a case is dismissed for lack of prosecution. *Ball v. City of Chicago*, 2 F.3d 752, 760 (7th Cir. 1993). Accordingly, the court hereby notifies the plaintiffs that failure to file either a written waiver of service or proof of service of the summons and amended

complaint upon defendants Patrick and Mary Hudec within thirty (30) days from the date of this order will result in the dismissal of the plaintiffs' claims in this action pursuant to Civil L.R. 41.3.

Accordingly,

**IT IS ORDERED** that plaintiffs Jerome and Laura Schmidt are to effect service of a summons and the amended complaint upon defendants Patrick and Mary Hudec within thirty (30) days from the date of this order. If service has already been waived or effected, the plaintiffs are directed to file either a written waiver of service or proof of service pursuant to Fed. R. Civ. P. 4(l) within thirty (30) days from the date of this order; failure to file either a written waiver of service or proof of service of a summons and the amended complaint upon defendants Patrick and Mary Hudec within thirty (30) days from the date of this order will result in the dismissal of the plaintiffs' claims in this action pursuant to Civil L.R. 41.3.

Dated at Milwaukee, Wisconsin, this 18th day of April, 2006.

BY THE COURT:

s/J.P. Stadtmueller  
J.P. STADTMUELLER  
U.S. District Judge